BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.11.2018
CORAM:
THE HONOURABLE MR. JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

T.C.(MD) No.14 of 2018

Lakshmi Cap Works,
Rep. by its Partner Mr.Rajasekaran,
No.65, South Car Street,
Sivakasi. : Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Joint Commissioner (CT),
Tirunelveli.

2.The Commercial Tax Officer - 1,
Sivakasi. : Respondents

PRAYER: This petition is filed under Section 38 of the TNGST Act, to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai, dated 16.04.2018 in M.T.S.A.No.295 of 2004 insofar as the restoration of levy of tax on the transactions claimed exemption as works contract under Section 3-B(2)(b) & (e) of the TNGST Act for the assessment year 2001-2002.

For Appellant : Mr.R.D.Ganesan
For Respondents : Mr.D.Muruganandam
Additional Government Pleader

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ORDER

(Order of this Court was passed by S.S.SUNDAR, J.)

This Tax Revision Petition is directed against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, dated 16.04.2018.

2.The appeal before the State Sales Tax Appellate Tribunal was filed by the State as against the order of the First Appellate Authority for the Assessment Year 2001-2002 (TNGST). It is stated that the petitioner had earlier engaged a Counsel and that the said Counsel has also entered appearance. It is further stated that the Counsel engaged by the petitioner withdrew the vakalat without the knowledge of the petitioner and that therefore, there was no representation on behalf of the petitioner before the Tribunal when the matter was taken up for hearing.

3.It is seen that the appellate Tribunal, after recording the fact that there was no representation for the petitioner who was the respondent before the Tribunal, observed that the respondent has nothing to say in the second appeal and that therefore, the second appeal was liable to be allowed. The order was not on merits. The absence of representation on behalf of the petitioner was taken as if the petitioner has no case before the Tribunal in the second appeal filed by the State.

4.Having regard to the submission of the learned Counsel for the petitioner, this Court is of the view that the non-appearance of the Counsel on behalf of the petitioner was without the knowledge of the petitioner and that the impugned order is also non-speaking order as it was not decided on merits. In these circumstances, the petitioner is entitled to be heard on merits before the Appellate Tribunal in the second appeal preferred by the State.

5.As a result, this Tax Revision Petition is allowed and the case is remitted back to the Sales Tax Appellate Tribunal (Additional Bench), Madurai, for a decision on merits after hearing the petitioner. The petitioner is directed to appear before the Tribunal on 27th December, 2018. The Tribunal is directed to dispose of the Second Appeal on merits after affording an opportunity to the petitioner as well as to the State in accordance with law. No costs.

Sd/

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-III)

TO

1.THE SALES TAX APPELLATE TRIBUNAL(ADDITIONAL BENCH),
MADURAI.

2.THE JOINT COMMISSIONER(CT),
TIRUNELVELI.

3.THE COMMERCIAL TAX OFFICER -I,
SIVAKASI.

+1cc to Mr.R.D.Ganesan, Advocate, SR.No.96461

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SRM
KK/PM/SAR-3/30.11.2018/2P-5C